STATE OF MICHIGAN

COURT OF APPEALS

In re TODD STEINER.

ANN STEINER, Conservator for TODD STEINER,

Petitioner-Appellee,

v

AUTO-OWNERS LIFE INSURANCE,

Respondent-Appellant.

UNPUBLISHED
November 16, 2006

No. 262855
Antrim Circuit Court
LC No. 04-008088-AV

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

Respondent Auto-Owners appeals by leave granted the circuit court order reversing the probate court's order and granting petitioner's motion to compel respondent to recognize the annuity payments disclaimer on behalf of Todd Steiner. We affirm.

This case arises out of respondent's refusal to recognize and abide by petitioner's disclaimer of Todd's property interest in future annuity payments that he was scheduled to begin receiving in 2003 as a result of a 1993 settlement in a civil suit that grew out of injuries he sustained in a motor vehicle accident. Petitioner's asserted motivation in doing a disclaimer and seeking recognition of the disclaimer was to maintain Todd's eligibility for Supplemental Security Income (SSI) and health insurance under Medicaid that he had been receiving as a result of a developmental disability. The issues posed to this panel are whether the disclaimer is permissible under the former Structured Settlement Protection Act (SSPA), MCL 691.1191 *et seq*.,[1] and the Disclaimer of Property Interests Law (DPIL), MCL 700.2901, *et seq*. We hold that the disclaimer is permissible and does not violate either the SSPA or the DPIL regardless of respondent's failure to consent.

[1] The SSPA was repealed in favor of the Revised Structured Settlement Protection Act, MCL 691.1301 *et seq*., which became effective September 1, 2006. MCL 691.1309; 2006 PA 296 (repealer effective October 1, 2006).

First, with respect to the SSPA, respondent argues that the disclaimer acts as a "transfer" under the act, where petitioner and her husband, as primary beneficiaries relative to the annuity, would receive the monthly payments originally destined for Todd. Therefore, according to respondent, the disclaimer required respondent's consent, which was not given.

An issue of statutory construction is a question of law that is reviewed de novo by this Court. *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005). The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature, and the Legislature is presumed to have intended the meaning it plainly expressed. *Linsell v Applied Handling, Inc*, 266 Mich App 1, 15; 697 NW2d 913 (2005). If statutory language is clear and unambiguous, then a court is required to apply the statute as written. *Id.* Judicial construction of a statute is only appropriate when statutory language is ambiguous and reasonable minds can differ with regard to its meaning. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 346; 578 NW2d 274 (1998). In construing a statute, a court must give effect to every word, phrase, and clause and avoid a construction that would render any part of the statute surplusage or nugatory. *Griffith, supra* at 533-534.

Former MCL 691.1193 provided, in part, as follows:

> (1) If a structured settlement payment right is subject to a contractual assignment restriction, a transfer of the structured settlement payment right is not effective and a structured settlement obligor or annuity issuer is not required to make payment directly or indirectly to a transferee of the structured settlement payment right transfer unless all of the following conditions are satisfied:
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> * * *
>
> (b) Each protected party has given all of the following in writing:
>
> (*i*) The protected party's irrevocable consent to the transfer.

Because respondent is a "protected party" as defined in former MCL 691.1192(h), and because the settlement agreement contained assignment restrictions, respondent's consent was required if indeed the disclaimer qualified as a "transfer." Former MCL 691.1192(o) defined "transfer" as a "sale, transfer, assignment, pledge, hypothecation, *or other form of disposition*, alienation, or encumbrance *made for consideration*." (Emphasis added.) Assuming that the disclaimer constituted a "form of disposition," we conclude that the disclaimer was not made for "consideration," as that term is legally defined.[2] Respondent and the probate court are of the opinion that petitioner's and her husband's intention or contemplation to put the monthly proceeds into a special needs trust for Todd, thereby possibility allowing him to maintain his SSI and Medicaid benefits, constituted consideration in exchange for the disclaimer. We disagree. "To have consideration there must be a bargained-for exchange." *Gen Motors Corp v Dep't of*

[2] The term "consideration" was not defined in the SSPA.

Treasury, 466 Mich 231, 238; 644 NW2d 734 (2002), citing *Higgins v Monroe Evening News*, 404 Mich 1, 20-21; 272 NW2d 537 (1978). The *Higgins* Court explained:

> The essence of consideration . . . is legal detriment that has been bargained for and exchanged for the promise. The two parties must have agreed and intended that the benefits each derived be the consideration for a contract.
>
> Thus, to reach the conclusion that a contract of hire existed, we must be able to state that each of the two parties . . . intended to suffer a detriment to receive a benefit, and that they agreed to exchange those detriments and benefits. [*Id.* at 20-21 (citation omitted).]

Here, there is no bargained-for exchange, no contract between parties, no binding promise or agreement, and no legal obligation relative to the disclaimer and the contemplated funding of a special needs trust. Monthly annuity payments made to Todd's parents instead of Todd belong to them, and they are free to do with them as they see fit. Todd would have no legal recourse should his parents choose not to fund the trust. Moreover, if annuity payments are placed directly in a special needs trust, Todd's parents do not actually receive any benefit of personal use of the annuity payments. Further, Todd's parents incur no detriment by simply receiving the monthly payments and then passing them on to the trust. Additionally, assuming that Todd actually receives any benefit from the disclaimer in the form of continued SSI and Medicaid coverage, which is contingent on governmental approval, the benefit is conferred by the mere fact that he would not directly receive annuity payments, and not as the result of any legal detriment incurred by his parents. In sum, this is not the type of situation or event that the Legislature intended to address and prevent when it enacted the SSPA. See House Legislative Analysis, HB 5066, January 10, 2001. Accordingly, because the disclaimer was not made for legally recognizable consideration, there was no "transfer" under the former SSPA and respondent's consent was not required.

Next, we hold that the disclaimer does not offend the DPIL. The DPIL abolished the common law right of disclaimer or renunciation, but "does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under another statute." MCL 700.2911. Thus, because petitioner had a right to disclaim the annuity interest under the SSPA because it was not made for consideration, the DPIL cannot be utilized to preclude the disclaimer. No more analysis need be undertaken; however, even were we required to address other provisions contained in the DPIL, they would not serve as a basis for reversal.

MCL 700.2909(2) provides that "[a] disclaimer acts as a nonacceptance of the disclaimed interest, rather than as a transfer of the disclaimed interest. The disclaimant is treated as never having received the disclaimed interest." MCL 700.2902(1) allows a fiduciary who represents a person to whom a disclaimable interest devolves, such as petitioner, to "disclaim a disclaimable interest in whole or in part." Under MCL 700.2902(1), a "disclaimable interest" is required, and MCL 700.2901(2)(b) defines the term "disclaimable interest" as follows:

> "Disclaimable interest" includes, but is not limited to, property, the right to receive or control property, and a power of appointment. *Disclaimable interest does not include an interest retained by or conferred upon the disclaimant by the disclaimant at the creation of the interest.* For purposes of this definition, the

> survivorship interest in joint property is not considered to be an interest retained or conferred upon the disclaimant even if the disclaimant created the joint property. [Emphasis added.]

Respondent relies on the emphasized language above in support of its proposition that Todd did not have a disclaimable interest. However, Todd, as the disclaimant, did not *retain* an interest when the annuity or settlement agreement interest was created as he had no prior interest, nor did Todd confer upon himself such an interest when it was created. Under MCL 700.2901(2)(b), Todd plainly held a "right to receive . . . property." Finally, respondent's arguments under MCL 700.2910 are rejected as either unpreserved, contrary to the facts and events that transpired, or both.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Alton T. Davis